

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1960

B

United States Court of Appeals

For the Second Circuit

P/S

STAMICARBON, N.V.,

Plaintiff-Appellant,

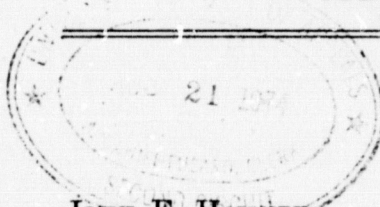
v.

AMERICAN CYANAMID COMPANY,

Defendant-Appellee.

**On Appeal from the United States District Court
for the Southern District of New York**

**SUPPLEMENT TO JOINT APPENDIX, CONTAINING
PAPERS IN UNITED STATES OF AMERICA v.
AMERICAN CYANAMID COMPANY, 60 CIV.
3857 OF WHICH THE COURT OF APPEALS
IS REQUESTED BY APPELLANT TO TAKE
JUDICIAL NOTICE**



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Preface to Supplement Requesting Judicial Notice

Stamicarbon, N.V.'s civil action against American Cyanamid Company exists solely because of the contempt charges brought by the United States Of America against American Cyanamid Company in 60 Civ. 3857 in the United State District Court, Southern District of New York.

The injunctive relief sought by Stamicarbon in its complaint is relief in respect of Cyanamid's conduct in that action (4a-5a). Stamicarbon's motion for a preliminary injunction sought the same relief pending the determination of its action under FRCP Rule 65. (11a-12a). The case was assigned under Calendar Rule 13 of the District Court to Judge Brieant, to whom 60 Civ. 3857 has been assigned, for this obvious reason. The order to show cause to bring Stamicarbon's motion on for hearing was issued by Judge Brieant in the District Court, not only upon consideration of the complaint and affidavit in support of the motion in this action, but also expressly [in words added thereto by him in ink, see record] upon "all papers and proceedings in 60 Civ. 3857" (11a). At the hearing on July 15, 1974, upon the motion, Judge Brieant's opening words were, "Where is Mr. Sonnett?" (14a), trial counsel for the United States in 60 Civ. 3857. Mr. Sonnett, representing the United States, became an active participant at the hearing (e.g., 18a-23a).

The Court here clearly will be better able to appreciate and deal with the issues presented by Stamicarbon's appeal if the papers in 60 Civ. 3857 are before it. Technically, however, they are not part of the record on appeal in this case under FRAP Rule 10. Hence, they are not reproduced in the Joint Appendix.

Nevertheless, the District Court was entitled to take judicial notice of its own records of other cases or pro-

Preface to Supplement Requesting Judicial Notice

ceedings. *Fletcher v. United States* (4th Cir.) 174 F.2d 373, cert. den. 338 U.S. 851; *White v. United States* (4th Cir.) 216 F.2d 1. And, this Court has held that even where matters of which the District Court might have taken judicial notice were not brought to its attention, this Court can do so, to affirm or show the impropriety of the decision below. *American Legion Post No. 90 v. First National Bank & Trust Co.* (2nd Cir.) 113 F.2d 868.

Appellant has therefore prepared this Supplement to the Joint Appendix, containing relevant papers and portions of papers on file in the United States District Court, Southern District of New York, in 60 Civ. 3857, of which the Court is respectfully requested to take judicial notice in considering the appeal.

**Excerpt of Final Judgment Against American
Cyanamid Entered in Action on Consent
on August 4, 1964**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 60 Civil 3857

UNITED STATES OF AMERICA

Plaintiff,

against

AMERICAN CYANAMID COMPANY,

Defendant.

Entered: August 4, 1964

Plaintiff, United States of America, having filed its complaint herein on October 5, 1960, and an amendment thereto on October 13, 1960, and defendant, American Cyanamid Company, having appeared and filed its answer to such complaint, as amended, denying the substantive allegations thereof; and plaintiff and defendant, by their respective attorneys, having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by either party hereto with respect to any such issue, and the Court having considered the matter and being duly advised,

Excerpt of Final Judgment

Now, THEREFORE, * * * it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims for relief against the defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890 * * * commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 15, 1914, * * * commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "Cyanamid" shall mean the defendant, American Cyanamid Company * * *

(D) "Co-conspirators" shall mean the following corporations, their successors and assigns, and each of them:

(1) Monsanto Chemical Company * * *

(2) Ciba Limited, * * *

(3) Ciba Products Corp. * * *

(4) British Industrial Plastics Ltd. * * *

(5) Societe des Produits Azotes * * * and

(6) The British Oxygen Company Limited, a corporation organized and existing under the British Companies Act * * *

(F) "United States" shall mean the United States, its territories and possessions * * *

Excerpt of Final Judgment

(H) "Dicy" shall mean dicyandiamide, the basic raw material from which melamine heretofore has been and is commercially produced, the basic ingredients of which are limestone, carbon and nitrogen which are chemically charged through the application of heat, electricity, pressure and the addition of other substances;

(I) "Melamine" shall mean the compound, $C_3H_6N_6$, produced commercially from dicy, calcium cyanamid, urea or any other substance;

(J) "Melamine resin" shall mean a reaction product of (1) melamine and an aldehyde or (2) melamine, an aldehyde and one or more other chemical components;

(K) "Laminates" shall mean articles formed by the combined action of heat and pressure on composite assemblies composed of super-imposed layers of material, with the use of a melamine resin, * * *

(N) "Willow Island" shall mean that portion of the chemical complex owned and operated by Cyanamid at Willow Island, West Virginia * * * in which portion Cyanamid produces melamine together with the adjacent melamine storage silo and those storage tanks forming an integral part of the melamine manufacturing process and the real estate adjacent thereto * * *

IV

(A) Cyanamid is ordered and directed forthwith to initiate action to place it in a position to comply with the following terms of this Section IV.

Excerpt of Final Judgment

(B) Cyanamid shall within two (2) years following the date of entry of this Final Judgment dispose of Willow Island * * *

V

(A) From the date of entry of this Final Judgment and for a period of ten (10) years from the date of disposition of Willow Island, or until melamine production capacity in the United States (other than melamine producing capacity of any co-conspirator and of Cyanamid) shall be increased by a total of more than twenty-five (25) million pounds per year over the total of such capacity at the date of disposition, but in no event for a period of less than five (5) years, Cyanamid is enjoined and restrained from:

(1) Expanding its production capacity in the United States for melamine beyond thirty (30) million pounds a year; and

(2) Producing in the United States in any calendar year from said date of disposition of Willow Island more than thirty (30) million pounds of melamine. In computing such production in any year, the amount of Cyanamid's melamine imports in the preceding calendar year of melamine made by Cyanamid outside the United States shall be deemed to be a part of Cyanamid's production.

(B) From the date of disposition of Willow Island, Cyanamid is enjoined and restrained from the manufacture of melamine in Willow Island * * *

(C) Cyanamid is ordered and directed to purchase an amount of melamine equivalent to the requirements of Cyanamid for melamine for use in its production of laminates in accordance with Section XI of this Final Judgment.

Excerpt of Final Judgment

VI

(A) Cyanamid is enjoined and restrained from directly or indirectly, entering into, performing, adhering to, maintaining or furthering, or claiming any rights under any combination, conspiracy, contract, agreement, arrangement or understanding with any person to:

(1) Allocate or divide customers, territories or markets for the manufacture, sale or distribution of dicy, melamine, any melamine resin or any product containing any of them;

(2) Eliminate, limit, restrain or prevent competition, or leave any person free from competition, in the manufacture, use, sale or distribution of dicy, melamine, any melamine resin or any product containing any of them;

(3) Limit, restrain or prevent importation into or exportation from the United States of dicy, melamine, any melamine resin or any product containing any of them;

(4) Boycott or otherwise refuse to do business with any person engaged in the manufacture, use, distribution or sale of dicy, melamine, any melamine resin or any product containing any of them;

or attempting to do anything forbidden in this subsection

(A) * * *

VII

Cyanamid is enjoined and restrained from:

(A) Referring or attempting to refer

(1) Any order or any potential order for dicy, melamine, any melamine resin or any product con-

Excerpt of Final Judgment

taining any of them to any co-conspirator or to any person in the United States which is engaged in the manufacture thereof * * * ; or

(2) Any inquiry or request for literature or information relating to dicy, melamine, any melamine resin or any product containing any of them to any co-conspirator * * *

(B) Utilizing as a distributor or agent for the distribution or sale of dicy, melamine, any melamine resin or any product containing any of them:

(1) Any co-conspirator or any person known by Cyanamid to be a sales agent of a co-conspirator; or

(2) Any person, in any country outside the United States, engaged in the manufacture thereof * * * where the purpose or effect is to restrain the trade or commerce of the United States;

(C) Utilizing as an agent for the distribution or sale of dicy, melamine or any melamine resin any person in the United States engaged in the manufacture thereof * * * ;

(D) Acting as a distributor or agent for the sale or distribution of dicy, melamine, any melamine resin or any product containing any of them for

(1) any co-conspirator;

(2) any person engaged in the United States in the manufacture or distribution thereof; or

(3) any person in any country outside the United States engaged in the manufacture or distribution thereof where the purpose or effect is to restrain the trade or commerce of the United States;

Excerpt of Final Judgment

(E) Coercing or attempting to coerce any person not to engage in the manufacture, use or sale of dicy, melamine, any melamine resin or any product containing any of them; or

(F) Restricting or limiting or attempting to restrict or limit the uses to which dicy, melamine, any melamine resin or any product containing any of them may be put after sale thereof.

VIII

Cyanamid is enjoined and restrained from:

(A) Refusing to sell dicy or any melamine resin to any person in the United States willing and financially able to purchase the same, at prices and on terms and conditions of sale corresponding to those regularly offered by Cyanamid to purchasers thereof in the United States of the same classification, except as such refusal may be required by Section VII of this Final Judgment; or

(B) Fixing or determining the differential between the prices charged by Cyanamid for dicy and the prices charged by Cyanamid in the United States for melamine or melamine resins for the purpose, or with the natural and probable effect, of restraining trade or commerce in melamine or melamine resins in the United States.

IX

(A) Cyanamid is ordered and directed to grant to any applicant making written request therefor a non-exclusive and unrestricted license or sublicense for the life of the patent, under any, some or all applicable Present Patents, to (1) make and sell dicy; (2) make and sell melamine from

Excerpt of Final Judgment

dicy; (3) make and sell any melamine resin; and (4) use any melamine resin; and under any, some or all applicable Future Patents, to (a) make and sell dicy; and (b) make and sell melamine from dicy. Each such license or sublicense shall be royalty-free.

(B) Cyanamid is ordered and directed to grant to any applicant making written request therefor a non-exclusive and unrestricted license or sublicense for the life of the patent, under (1) any, some or all Present Patents and Future Patents to make and sell melamine from urea; and (2) any, some or all Future Patents to (a) make and sell, any melamine resin; and (b) use any melamine resin, without any limitation or condition whatsoever except that: (a) The license may be non-transferable; (b) A reasonable and non-discriminatory royalty may be charged; (c) Reasonable provisions may be made for periodic royalty reports * * * and inspection of the books and records of the licensee * * *; (d) reasonable provisions may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties, or permit inspection of the books and records as herein provided; and (e) the license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving to Cyanamid thirty (30) days' notice in writing * * *

(F) Cyanamid is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, title to, or any interest in, or license under any United States Letters Patent unless

(1) Cyanamid also obtains the right to issue licenses under such patents as required by this Section IX; or

(2) Cyanamid has acquired a non-exclusive right or license and shall have made a *bona fide* effort

Excerpt of Final Judgment

(not including additional monetary consideration) to persuade the licensor to make available to any third person requesting the same a right or license equivalent to that required of Cyanamid by this Section IX and on terms and conditions at least as favorable as those accorded to Cyanamid * * *

X

(A) Cyanamid is ordered and directed for a period of ten (10) years from the date of entry of this Final Judgment, upon payment to Cyanamid of its cost of compilation to furnish, upon written request:

(1) To any person engaged or desiring to engage in the United States in the manufacture of dicy, melamine or any melamine resin or melamine resins (a) all technical information, which Cyanamid has and which Cyanamid has the right to furnish on the date of entry of this First Judgment, usable for the manufacture of, and which will enable such person to manufacture commercially dicy, melamine from dicy and any such melamine resin or resins * * *

(B) Cyanamid may, as a condition to furnishing such technical information pursuant to subsection (A) above, require the person to whom it is furnished to agree in writing to keep such technical information confidential and to use such technical information received pursuant to subsection (A) above only for its own manufacture or use in the United States * * *

XI

(A) Commencing with the date of the disposition of Willow Island, Cyanamid is ordered and directed to purchase annually from other producers of melamine (with

Excerpt of Final Judgment

the preference to United States producers) an amount of melamine equivalent to the requirements of Cyanamid for melamine for use by Cyanamid in the production of laminates in the United States provided that at any time after ten (10) years from such date, Cyanamid may petition to this Court to be relieved from this provision, such relief to be granted upon a showing by Cyanamid to the satisfaction of this Court that the effect of such relief will not be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country * * *

XII

Cyanamid is ordered to publish in the trade journal called Oil, Paint & Drug Reporter within ninety (90) days after the entry of this Final Judgment a notice and advertisement to the following effect:

(1) Cyanamid will grant licenses under its patents to make, use and sell dicy, melamine and melamine resins in accordance with subsections (A) and (B) of Section IX of this Final Judgment;

(2) Cyanamid will sell dicy and melamine resins made by it in accordance with subsection (A) of Section VIII of this Final Judgment; and

(3) Cyanamid will furnish technical information in accordance with Section X of this Final Judgment * * *

XIV

For the purpose of securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Anti-

Excerpt of Final Judgment

trust Division, and on reasonable notice to Cyanamid made to its principal office, be permitted:

(A) Access during the office hours of Cyanamid to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Cyanamid which relate to any of the matters contained in this Final Judgment;

(B) * * * to interview officers or employees of Cyanamid, who may have counsel present.

Upon such written request Cyanamid shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means provided in this Section XIV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XV

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: August 4, 1964

/s/ RICHARD H. LEVET
United States District Judge

**So-Ordered Stipulation Dated May 27, 1969,
Construing Final Judgment**

[SAME TITLE]

Whereas Cyanamid represents that it will construct in the United States new facilities utilizing a urea-to-melamine process and will discontinue production of melamine at its plant utilizing the dicy-to-melamine process at Wallingford, Conn.; and

Whereas Willow Island was sold to Fisher Melamine Corporation on November 1, 1964 pursuant to the Final Judgment herein; and

Whereas subparagraph (1) of subsection (A) of Section V of the Final Judgment contains restrictions upon Cyanamid relating to the construction of production capacity in the United States for melamine;

IT IS HEREBY STIPULATED AND AGREED THAT:

1. Construction by the defendant of a melamine production facility using urea as the principal raw material having production capacity of seventy (70) million pounds per year, shall not be construed to be a violation of the Final Judgment entered herein on August 4, 1964.

2. If Cyanamid constructs such melamine production facility and if, at the time said new facility goes on stream, melamine production capacity in the United States (other than melamine producing capacity of any co-conspirator and of Cyanamid) shall not have been increased by more than twenty-five (25) million pounds per year over the total of such capacity on November 1, 1964, said facility

1969 So-Ordered Stipulation

shall be operated in compliance with the provisions of subparagraph (2) of subsection (A) of Section V of the Final Judgment until November 1, 1974 or until such melamine production capacity shall have been so increased, whichever shall be earlier.

For the Plaintiff:

/s/ RICHARD W. McLAREN [Etc.]

For the Defendant:

DONOVAN LEISURE NEWTON & IRVINE

By JAMES R. WITHROW, JR.
A Member of the Firm

Agreed to:

AMERICAN CYANAMID COMPANY

By T. P. TUNKAN
Vice President

Dated: May 27, 1969

So ordered:

/s/ RICHARD H. LEVET
United States District Judge,
Southern District of New York

**Consent Order of October 10, 1973, Permitting
American Cyanamid to Produce up to 44 Million
Pounds of Melamine in 1973**

[SAME TITLE]

Defendant, American Cyanamid Company, having moved on August 8, 1973 for relief from Section V(A)(2) of the Judgment entered by this Court on August 4, 1964 which required that American Cyanamid Company produce no more than thirty (30) million pounds of melamine in the United States in any calendar year until November 1, 1974, and it appearing that it is in the public interest to have an adequate supply of melamine, and Plaintiff, the United States of America, and Defendant, American Cyanamid Company, by their respective attorneys, having each consented to the making and entry of this Order, it is hereby

ORDERED, ADJUDGED AND DECREED that the Defendant, American Cyanamid Company, immediately and forthwith shall:

1. Be permitted to produce an amount of melamine not to exceed forty-four (44) million pounds in the calendar year ending December 31, 1973.
2. Subject to *force majeure*, supply its melamine customers until December 31, 1973 at the same rate those customers were purchasing melamine from American Cyanamid Company during the first six months of 1973. American Cyanamid Company shall notify all its customers of

1973 Consent Order

this provision and of the fact that it may not be in a position to supply them in 1974.

3. Release Ashland Oil and Refining Company from its obligations under its agreement with American Cyanamid Company dated July 8, 1968, as amended.

Dated: October 10, 1973

/s/ CHARLES L. BRIANT, JR.
United States District Judge

**Consent Order of February 13, 1974, Modifying
Final Judgment, By Permitting American
Cyanamid to Produce up to 50 Million
Pounds of Melamine in Jan.-Oct. 1974**

[SAME TITLE]

Whereas Section V(A)(2) of the Final Judgment, entered August 4, 1964, enjoins the Defendant, American Cyanamid Company, from producing more than thirty (30) million pounds of melamine in any calendar year until October 31, 1974; and

Whereas there appears to be an acute excess of demand over the supply of melamine; and

Whereas it is in the public interest to have an adequate supply of melamine; and the parties hereto, by their respective counsel, having each consented to the making and entry of this Order modifying Section V(A)(2) of the Final Judgment, and the Court having held a hearing on February 8, 1974, and having filed a Memorandum this date;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, American Cyanamid Company, immediately and forthwith shall:

1. Be permitted, pursuant to Section V(A)(2) of the Final Judgment entered August 4, 1964, as herein modified, to produce an amount of melamine not to exceed fifty (50) million pounds during the period January 1, 1974 to October 31, 1974.

2. Offer for domestic sale to others than its affiliates upon reasonable terms and conditions:

1974 Consent Order

(A) not less than twenty one percent (21%) of all the melamine which it produces in the United States during the period between January 1, 1974 and October 31, 1974. At the beginning of each month of said period, Cyanamid is to estimate its total production for that 10 months and offer for sale during each month an amount of melamine equivalent to not less than twenty one percent (21%) of that estimate, less the amount sold since January 1, 1974, and divided by the number of months remaining until October 31, 1974.

(B) not less than twenty one percent (21%) of all the melamine which it produces in the United States during the period between November 1, 1974 and December 31, 1974. At the beginning of each month of said period, Cyanamid is to estimate its total production for that two months and offer for sale during each month an amount of melamine equivalent to not less than twenty one percent (21%) of that estimate, less the amount sold since November 1, 1974, and divided by the number of months remaining until December 31, 1974.

So ordered: New York, N.Y.
February 13, 1974

/s/ CHARLES L. BRIEANT, JR.
United States District Judge

**Petition of United States for Order to Show Cause
Why American Cyanamid Should Not Be
Found in Criminal Contempt**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 60 Civil 3857

UNITED STATES OF AMERICA,

Petitioner,

v.

AMERICAN CYANAMID COMPANY,

Respondent.

The United States of America, by its attorneys, acting under the direction of the Acting Attorney General, presents this Petition for an order requiring the above-named Respondent to show cause why it should not be found in criminal contempt of this Court. The Petitioner represents to the Court as follows:

I

Description of Respondent

1. American Cyanamid Company ("Cyanamid") is hereby made a respondent. Cyanamid is a corporation organized and existing under the laws of the State of Maine with its principal place of business in Wayne, New Jersey.

Petition for Order to Show Cause

II

Prior Judgment of the Court

2. On October 5, 1960, petitioner filed in this Court Civil Action No. 60 Civil 3857, brought under Section 4 of the Sherman Act (15 U.S.C. §4), and Section 15 of the Clayton Act (15 U.S.C. §25) charging that Cyanamid had restrained, monopolized and attempted to monopolize interstate and foreign commerce in melamine and melamine-containing products, thereby violating Sections 1 and 2 of the Sherman Act, and that Section 7 of the Clayton Act was violated by Cyanamid's acquisition of the Formica Company, a leading consumer of melamine laminating resins.

3. On August 4, 1964, upon consent of the parties, a Final Judgment ("Judgment") was entered in this Court, in Civil Action No. 60 Civil 3857. A copy of this Judgment is annexed to this Petition and marked as Exhibit "A".

4. Section XV of the Judgment provides:

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Petition for Order to Show Cause

III

Jurisdiction of This Court

5. This Court has jurisdiction over this matter under Title 18 U.S.C. §401 and Rule 42(b), Federal Rules of Criminal Procedure, and Section XV of the Judgment set forth in paragraph 4 above.

IV

Violation of the Judgment Charged

6. Petitioner charges that the above-named Respondent has knowingly and willfully disobeyed and violated Section V(A)(2) of the Judgment and Section 2 of this Court's Supplemental Order dated May 27, 1969 ("Supplemental Order") and is in criminal contempt of the authority of this Court, as a result of the Acts and failures to act charged below.

7. Section V(A) of the Judgment provides:

From the date of entry of this Final Judgment and for a period of ten (10) years from the date of disposition of Willow Island, or until melamine production capacity in the United States (other than melamine producing capacity of any co-conspirator and of Cyanamid) shall be increased by a total of more than twenty-five (25) million pounds per year over the total of such capacity at the date of disposition, but in no event for a period of less than five (5) years, Cyanamid is enjoined and restrained from: * * *

Petition for Order to Show Cause

- (2) Producing in the United States in any calendar year from said date of disposition of Willow Island more than thirty (30) million pounds of melamine. In computing such production in any year, the amount of Cyanamid's melamine imports in the preceding calendar year of melamine made by Cyanamid outside the United States shall be deemed to be part of Cyanamid's production.
8. Section 2 of the Supplemental Order provides:
 2. If Cyanamid constructs such melamine production facility and if, at the time said new facility goes on stream, melamine production capacity in the United States (other than melamine producing capacity of any co-conspirator and of Cyanamid) shall not have been increased by more than twenty-five (25) million pounds per year over the total of such capacity on November 1, 1964, said facility shall be operated in compliance with the provisions of subparagraph (2) of subsection (A) of Section V of the Final Judgment until November 1, 1974 or until such melamine production capacity shall have been so increased, whichever shall be earlier.
9. Respondent has full knowledge of the Judgment in 1972.
10. On or about November 1, 1964, Willow Island was disposed of by Respondent.
11. Melamine production capacity in the United States (other than that of any co-conspirator and of Respondent) was at least 83 million pounds per calendar year on November 1, 1964.

Petition for Order to Show Cause

12. Between November 1, 1964, and January 1, 1973 melamine production capacity (other than that of any co-conspirator and of Respondent) had not increased 25 million pounds per calendar year in the United States.

13. Melamine production capacity in the United States (other than that of any co-conspirator and of Respondent) was not more than 108 million pounds per year during the calendar year 1972.

14. Respondent knew that domestic capacity (other than that of any co-conspirator and of Respondent) had not increased 25 million pounds between November 1, 1964 and January 1, 1973.

15. Respondent, by manufacturing in excess of 30 million pounds of melamine in the United States in 1972 and by importing 569,320 pounds of melamine produced by Cyanamid outside the United States in 1971, knowingly and willfully violated the terms of Section V(A) (2) of the Judgment in 1972.

Prayer

WHEREFORE, the Petitioner moves this Court to issue an order directing the Respondent to appear before this Court, at a time and place to be fixed in said order, to show cause why it should not be adjudged in criminal contempt of this Court and punished therefor.

/s/ THOMAS E. KAUPER
Assistant Attorney General

/s/ STEPHEN F. SONNETT

* * *

Attorneys, Department of Justice

**Affidavit Sworn to March 15, 1974, by
U. S. Attorneys in Support of Petition**

[SAME TITLE]

DISTRICT OF COLUMBIA: SS

Stephen F. Sonnett and Barry J. Kaplan being duly sworn, depose and say:

1. This is an affidavit in support of a Petition by the United States for an order to show cause why the above-named respondent should not be found in criminal contempt.

2. The affiants are attorneys in the Antitrust Division of the United States Department of Justice, charged with the responsibility of investigating and prosecuting alleged violations of the Final Judgment entered by this court on August 4, 1964 in the case entitled *United States v. American Cyanamid Company*, (Civil Action No. 60 Civil 3857).

3. In the course of this investigation, affiants have (a) examined certain relevant files and documents of the Department of Justice; (b) examined certain files, documents and records produced by respondent American Cyanamid Company under provision XIV of said Judgment; (c) interviewed certain employees of American Cyanamid Company.

4. Based upon the information which has been obtained from the above sources, affiants affirm that to the best of their knowledge and belief the statements and allegations contained in the foregoing Petition are true and correct.

5. No previous application has been made for such an order.

/s/ Stephen F. Sonnett

/s/ Barry J. Kaplan

[Sworn to March 15, 1973.]

**Order to Show Cause to Adjudge American
Cyanamid in Criminal Contempt, Issued
March 18, 1974**

[SAME TITLE]

Attorneys for the United States of America have heretofore filed a Petition for the prosecution of the above-named Respondent for criminal contempt of Court, and have alleged in said Petition that the Respondent, American Cyanamid Company, has violated the Final Judgment of this Court entered August 4, 1964 in *United States v. American Cyanamid Company*, Civil Action No. 60 Civil 3857.

It appearing to this Court that good cause has been shown therefor, it is hereby

ORDERED that American Cyanamid Company show cause if any there be on the 29th day of April, 1974, at 10 A.M. in courtroom 1505 of this Court in New York City, State of New York why it should not be adjudged to be in criminal contempt of this Court purs. to F.R. Crim. R 42(b) by reason of its violation of the Final Judgment of this Court as aforesaid, and be punished for said criminal contempt.

Sufficient cause appearing therefor, it is further ORDERED, that service of a copy of this Order, together with a copy of the Affidavit and Petition annexed and filed herein, be personally made on the Respondent, or their attorneys herein on or before the 20th day of March, 1974 by 4:45 P.M.

Dated: March 18th, 1974
New York, New York

Issued at 4:15 P.M.

/s/ CHARLES L. BRIEANT, JR.
U.S.D.J.

**Plea of Not Guilty and Answer of American Cyanamid
to Petition of United States Dated April 15, 1974**

[SAME TITLE]

Respondent American Cyanamid Company, by its attorneys, does hereby enter a plea of Not Guilty to Petitioner's charges and, in answer to the Petition of the United States for an Order to Show Cause why it should not be found in criminal contempt of this Court, respectfully states as follows:

I

1. Admits that it is a corporation organized and existing under the laws of the State of Maine with its administrative headquarters at Wayne, New Jersey.

II

2. Admits that a Complaint and an Amended Complaint were filed in this action in October of 1960 and refers to those pleadings for a complete statement of their contents; and avers that it filed its answer on December 30, 1960 denying all of the substantive allegations of said Amended Complaint.

3. Admits that a Final Judgment in the form annexed to the Petition as Exhibit A was entered in this Court on August 4, 1964 upon consent of the parties; and avers that said Judgment was entered without trial or adjudication of any issue of fact or law and expressly provides that it does not constitute evidence of an admission by Respondent as to any such issue.

4. Admits that Section XV of said Final Judgment is accurately reproduced in paragraph 4 of the Petition.

Plea of Not Guilty and Answer of American Cyanamid

III

5. Admits that Petitioner seeks to invoke the jurisdiction of this Court under 18 U.S.C. §401 and Rule 42(b), Federal Rules of Criminal Procedure; and admits and avers that this Court has jurisdiction under Section XV of the Final Judgment to enforce compliance with said Judgment.

IV

6. Denies each and every allegation of paragraph 6 of the Petition herein and further denies that it is in criminal contempt of the authority of this Court.

7. Admits that Section V(A)(2) of the Final Judgment is accurately reproduced in paragraph 7 of the Petition.

8. Admits that Section 2 of a Stipulation between the parties hereto, "So ordered" by this Court and dated May 27, 1969, is accurately reproduced in paragraph 8 of the Petition.

9. Admits that it had full knowledge of the Final Judgment in 1972, and avers that all actions taken by it during 1972 were delivered in good faith to be in compliance with the terms of said Judgment.

10. Admits that on or about November 1, 1964 it disposed of its melamine facilities defined in Section II (N) of the Final Judgment as "Willow Island" in accordance with the provisions of Section IV of the Final Judgment.

11. Denies that melamine production capacity in the United States (other than that of any co-conspirator and of Respondent) on November 1, 1964 was "at least 83 mil-

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lion pounds per calendar year''; and avers that such production capacity was, in fact, 83 million pounds per year.

12. Denies the allegations of paragraphs 12, 13, 14 and 15 of the Petition, and avers as follows: It was Respondent's opinion throughout 1972 that melamine production capacity (other than that of any co-conspirator and of Respondent) had increased by more than 25 million pounds per year over the 83 million pounds of such capacity in existence on November 1, 1964; Respondent avers that such capacity in fact exceeded 108 million pounds per year during 1972. Respondent kept Petitioner fully informed of its actions during 1972 and disclosed its production figures on a regular basis throughout that year. On November 7, 1972, Petitioner and Respondent agreed to retain a consultant to study and report on melamine production capacity in the United States. The consultant did not report his findings until March 7, 1973 (and the full contents of his report were not disclosed to Respondent until April 12, 1974). In these circumstances, Respondent in good faith produced a total of 33,625,200 pounds of melamine in the United States during 1972.

Further answering said Petition, Respondent avers that the actions now charged to be criminally contemptuous of this Court's Final Judgment were set out in the moving papers which Respondent filed with the Court on August 8, 1973 in support of its motion for an Order accelerating the expiration date of the production restriction contained in Section V(A)(2) of the Final Judgment. Subsequent to the filing of said motion papers, said Section V(A)(2) was modified by order of the Court upon the consent of both Petitioner and Respondent on October 10, 1973 (so as to permit Respondent to produce up to 44 million pounds of melamine in 1973) and on February 13, 1974 (so as to per-

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mit Respondent to produce up to 50 million pounds of melamine during the period January 1 through October 31, 1974, at which date the production limitation contained in Section V(A)(2) of the Final Judgment terminates.

WHEREFORE, Respondent moves this Court to dismiss the Petition and Order to Show Cause and to find Respondent not guilty of criminal contempt.

Dated: April 15, 1974

DONOVAN LEISURE NEWTON & IRVINE
Attorney for Respondent
American Cyanamid Company

**Stipulation of May 7, 1974 for Entry of
Secrecy Order**

[SAME TITLE]

Stipulation

It is stipulated by and between the undersigned parties by their respective attorneys, that:

The parties consent that a Consent Order on the form hereto attached and filed herewith may be filed and entered by the Court.

Dated: May 7, 1974

For the Petitioner:

/s/ Stephen F. Sonnett, Attorney
U.S. Department of Justice [Etc.]

For the Respondent:

DONOVAN LEISURE NEWTON & IRVINE

By /s/ Vernon E. Vig [Etc.]

Consent Order for Secrecy of May 8, 1974

[SAME TITLE]

Upon consent of the parties, and the Court being duly advised, it is hereby

ORDERED, ADJUDGED, AND DECREED that Petitioner's production, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, of the report of J. Lisle Reed entitled "U.S. Plant Capacity for the Production of Melamine, an Independent Study Conducted for the Department of Justice and American Cyanamide, Inc.", dated March 7, 1973, and documents employed by or received by J. Lisle Reed in conducting the study which preceded that report, will be subject to the following conditions:

(1) Said report and documents are designated as containing sensitive commercial or proprietary information. Respondent shall take all steps necessary to prevent the disclosure of such report and documents, or any information obtained from such report and documents, to any person except to attorneys engaged in the conduct of this litigation or persons whom counsel deem necessary to assist in the conduct of this litigation. All attorneys and all such persons shall be notified of the entry of and the terms of this Order before they are permitted access to said report, documents or information, and each such attorney and each such person shall agree not to use said report or documents or any information contained therein for any purpose other than for use in this litigation.

(2) If said report, documents or information contained therein are used in conjunction with the trial of this case,

Consent Order for Secrecy

they shall be utilized in a manner which will maintain the confidentiality of the sensitive commercial or proprietary information contained therein, subject to further order by the Court.

(3) The Court will be advised of all persons to whom said report, documents or information have been disclosed.

Dated: New York, New York
May 8, 1974

/s/ CHARLES L. BRIEANT JR.
U.S.D.J.

Waiver of Trial by Jury, Dated July 15, 1974

[SAME TITLE]

Waiver of Trial by Jury

American Cyanamid Company, the above-named Respondent, being fully advised of the nature of this waiver and of its rights, hereby waives trial by jury and consents to trial by the Honorable Charles L. Brieant, Jr.

For the Respondent:

DONOVAN LEISURE NEWTON & IRVINE

By SAMUEL W. MURPHY JR.
A Member of the Firm

Agreed and consented to for the Petitioner:

By /s/ STEPHEN F. SONNETT
Attorney, Department of Justice

Agreed to:

AMERICAN CYANAMID COMPANY

By /s/ J. I. WYN
Vice President

So ordered:

/s/ CHARLES L. BRIEANT JR.
United States District Judge

Dated: July 15, 1974

**Excerpt of Transcript of Proceedings of July 15, 1974,
Relating to Subpoenas Issued in 60 Civ. 3857 by the
United States and Cyanamid to Stamicarbon Licensees**

[SAME TITLE]

July 15, 1974—11:40 a.m.

Before:

Hon. CHARLES L. BRIEANT, JR., District Judge

Appearances:

STEPHEN SONNETT, Esq., United States Department of
Justice, Washington, D.C.

MESSRS. DONOVAN, LEISURE & IRVINE, Attorneys for de-
fendant.

By: SAMUEL W. MURPHY, Esq., Of Counsel.

* * * Mr. Murphy: I believe there are two motions
before the Court and I don't know which one your Honor
is referring to.

The Court: I have only one. I have one by Melamine
Chemicals Incorporated. * * *

The Court: This is a motion to quash subpoena. If
there is another motion you should call it to my attention.

Mr. Murphy: They filed a motion which is called
Motion of Melamine Chemicals, Inc. for Secrecy Order
* * *

The Court: I don't have it. Who represents Melamine
Chemicals?

Mr. Huettner: Your Honor, my name is Richard Huett-
ner and with me is Bruce Tittle from Cincinnati. Mr.
Tittle is the trial counsel for Melamine Corporation and

Excerpt of Transcript of Proceedings

is familiar with the details of the particular matter before the Court. I would like to have the Court admit Mr. Tittle for the purpose of presenting his motion.

The Court: If need be, all right. You may be admitted.

Mr. Tittle: If the Court please, your Honor, there are two motions Melamine—

The Court: Where is the other one?

Mr. Tittle: One was filed last Thursday.

The Court: Hand us up an office copy or something, would you?

Mr. Tittle: Yes, your Honor.

(Document handed to the Court.)

The Court: All right, we have it now.

Mr. Tittle: Your Honor, that motion of Melamine Chemicals, Inc. for a secrecy order, in many respects overlaps with the Stamicarbon matter which your Honor heard this morning in that Melamine Chemicals Inc. is one of those Stamicarbon licenses which is bound not to disclose confidential information of Stamicarbon. However, it is in one respect a little bit broader than Stamicarbon's motion in that Melamine Chemicals, Inc. claims to have confidential trade secret information of its own * * *.

The Court: You're talking in terms of industrial processes?

Mr. Tittle: That's correct, your Honor. Melamine Chemicals, Inc. is a Stamicarbon licensee and has been practicing the process since approximately March of 1971. During that period of time it has made substantial improvement here and they are in the process and claims that to be its own trade secret proprietary information.

* * *

The Court: Well, I think certainly Mr. Haigney and his clients are the best qualified to protect Stamicarbon's secrets; it's their secrets. And I think that you can rely on their protecting them following the procedure which

Excerpt of Transcript of Proceedings

the Court has previously directed in this case which in brief permits Mr. Haigney to sit here with his engineering staff and protect their secrets.

The problem is so what difference with respect to Melamine Chemicals Incorporated secrets because on the present posture of the record the defendant knows all about Stamicarbon's secrets. They have paid money to learn them. But presumably do not know the secrets of MCI.

* * *

Mr. Murphy: Well, if your Honor please, Kenyon & Kenyon came into this case as a non party and filed a motion by MCI for a protective order. * * * On Friday when it became evident to us that the government would be putting on witnesses to describe the operations of the other plants, we subpoenaed those other plants to obtain materials which it seemed to me would be necessary to prepare to cross examine those witnesses.

The two separate motions raise two different sets of issues. Now, I will be glad to take up whichever one your Honor wishes first.

The Court: Well, which one do you want to be heard on first, Mr. Tittle?

Mr. Tittle: Well, I think Mr. Murphy is correct. As far as our first motion is concerned, I think much of it is tied up with the Stamicarbon motion of this morning and whatever the outcome of that will govern most of our first motion, except for the matter of the MCI trade secret information and at this time I would like to request that MCI be permitted to attend the trial and given the same right as has been given to Stamicarbon. * * *

The Court: Well, I should think that the protection of MCI's proprietary information is a much simpler problem than that as raised by—with regard to Stamicarbon because I take it the contention with regard to the Stamicarbon secrets is that if you employed them correctly the plants would have a higher capacity.

Excerpt of Transcript of Proceedings

If MCI has private secrets, I don't see how they are relevant at all and I would be inclined to protect them by whatever mechanical means is best suited to doing so. Including granting you the same privilege when persons representing MCI are testifying.

I take it nobody knows your secrets except your own employees; is that correct?

Mr. Tittle: I think that is in large part true, your Honor, yes.

The Court: All right. Then you may be available to consult with those witnesses when they are called and you may instruct them that if an answer threatens to call for the revelation of an MCI secret, they are to apprise the Court and yourself. And I will deal with that when we come to it. But I seen no relevance. * * *

The Court: I will rule when the question arises and I will give you standing to protect your secret processes. Your procedures will have to be in all respects in good faith and I think the primary issue is going to be one of relevancy.

What about this other motion?

Mr. Tittle: * * * The other motion, our motion to quash, briefly, the background of that is this:

On Friday MCI who is of course not a party to the American Cyanamid-Government case was served with a subpoena to produce certain documents. The subpoena was served by counsel for American Cyanamid on Mr. Huettnner's firm here in New York, Kenyon, Kenyon, Reilly, Carr & Chapin.

* * *

Mr. Tittle: * * * The subpoena calls, your Honor, for all deposition transcripts, answers to interrogatories and/or other materials regarding the design, construction, capacity and/or output of the melamine plant operated by Melamine Chemicals, Inc. at Donaldsonville, Louisiana, ob-

Excerpt of Transcript of Proceedings

tained, prepared or discovered in connection with a civil action entitled Ashland Oil Incorporated versus First Mississippi Corporation and Melamine Chemicals, Inc., the Stamicarbon cersus N.V. Nederlandse. Staatsmijnen, Hoechst-Uhde Corporation and American Hoechst Corporation, 71 Civ 3703 (SJR) SDNY.

Mr. Murphy: Well that's a point that they raised in their motion to quash. To the extent this gets into work product or privileged communications or trade secrets, I think those are things that can be handled on a specific basis. But as your Honor knows, there are issues in this other litigation which evidently have quite a bearing on at least one of the issues in this litigation and we are looking for a little help.

The Court: Well if you do get a look at these interrogatories and depositions and transcripts and exhibits, which I think as far as you can go, I don't think you can get other materials because they will be work product, but if you do get a look at it I will have to have a protective order here which will keep competitive information which is being protected already by the Court in that action from being in the hands of improper persons at the defendant's office.

Mr. Murphy: Your Honor, it may be a small point but I am not at all sure that this material is protected by Court order in the other action.

The Court: The Court was advised that the Judge in charge of the other litigation had approved a stipulation which kept it privileged and we restrict to certain named persons.

Mr. Murphy, Well, your Honor, the stipulation which was filed with MCI's motion of last week is simply a stipulation between parties. I see no "so ordered" on it. * * *

The Court: I would be prepared to treat it as an order of the Court and to enlarge it to the extent that only certain named persons should see that material and they will be under direction not to disclose. Is there any problem with that?

Excerpt of Transcript of Proceedings

Mr. Tittle: Well, your Honor, there is no problem other than one of physical problem. If your Honor thinks that at times they should be permitted to—

The Court: For the limited purpose of this case and restricted as to who can see it. I won't let them see other materials we are just talking about matters which would be a part of the law suit for the stipulation, they would be on file in our clerk's office. * * *

The Court: * * * I decline to quash the subpoena but I will limit it to matters which would have been public records in this litigation but for your stipulation.

I will protect any work product which are matters which would ordinarily in the regular course not have been filed in court. And I will permit you to submit an order on waiver of notice which will limit access to those papers to persons not—to a limited number of persons in Cyanamid.

Mr. Murphy: As I understand it, your Honor, we will be given without contest our first request which is for the agreements between—

The Court: He says that Ashland is already producing those for you and you don't need two, do you.

Mr. Murphy: And the second which is daily operating information.

Mr. Tittle: That's correct. There has been a conference between Mr. Chambers of our firm and one of Mr. Murphy's associates. I might suggest your Honor, we had this very same problem in the civil action against Stamicarbon with American Cyanamid. They objected to producing certain information and we didn't agree to, and which limited the scope of the—

The Court: I think you should make an effort to do the same kind of thing here. And you must also remember that the government is very likely to subpoena to an equal extent so you might as well work it out with Mr. Sonnett at the same time.

Excerpt of Transcript of Proceedings

Mr. Sonnett: I would like to inquire on the record, I am not aware of any motion to quash any of our subpoenas. Is that correct.

Mr. Murphy: That's correct. The only motions are evidentially addressed to the defendant.

Mr. Sonnett: Right. So as far as I know, your Honor, we have not been limited in our subpoena.

The Court: All right. Then the issues presented by MCI are fully resolved.

Mr. Tittle: Apparently so, your Honor.

The Court: All right. I will mark these motions disposed of in accordance with the directions of the Court made on the transcript of the hearing today and if you have any further difficulty with the matter, let me know as promptly as possible.

Mr. Tittle: Your Honor, the government in the statement of Mr. Sonnett, that he just made, we have moved of course for a secrecy order and that does involve his subpoena.

The Court: Well, I will deal in the same fashion with that applicatoin as I already have with respect to your application concerning Cyanamid. I will make the same directions and ruling. All right. Is then anything else, gentlemen?

* * *

Mr. Masterson: Your Honor, my name is W.D. Masterson from Dallas, Texas; I am here representing Premiere Petro Chemical Company who has been subpoenaed by the government to produce certain documents and I would like to state for the record that we are completely satisfied with the Court's ruling in this regard and we are relying upon the Court's rulings to protect your having to disclose documents that would violate our secrecy agreement with Stamicarbon.